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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,641	07/01/2003	Cynthia Dianne Maas	19,448	3690
23556	7590	02/02/2006		
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			EXAMINER HILL, LAURA C	
			ART UNIT	PAPER NUMBER
			3761	
DATE MAILED: 02/02/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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10-62-641

EXAMINER

ART UNIT

PAPER

20060124

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

**Office Action Summary**

Application No.

10/612,641

Applicant(s)

MAAS ET AL.

Examiner

Laura C. Hill

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/9/05 &amp; 1/3/06</u> | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 29 November 2005 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1-28 (see pages 7-9, Remarks dated 20 October 2005) have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 1-13 and 16-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rajala et al. (US 5,940,887; herein 'Rajala') in view of Kuwasaka (EP 1,072,243 A2; herein 'Kuwasaka'). Regarding claims 1, 3-7, 10-11, 16-17 and 22-28 Rajala discloses a disposable pant-like garment subassembly 10 comprising (column 3, lines 53-63): **a)** stretchable front body portion/panel 16 having front/second leg elastic 50 secured along a second end (column 4, lines 8-16); **b)** stretchable back body portion/panel 20 having back/fourth elastic band 48 secured along a second end and said back body portion/panel 20 is separate, distinct and discontinuous from front panel 16 (column 4, lines 8-16 and figure 1); **c)** an absorbent pad assembly laid in crotch portion 24 and capable of being folded (column 4, lines 55-59); and **d)** a pair of seams [seams include the outermost longitudinal edges of front and back panels] that are capable of joining the front and back panels together to form leg openings 44,46 and a waist opening (column 4, lines 23-28 and figure 1), said second and fourth elastics 50, 48 located adjacent the pair of leg openings 44, 46 (figure 1), and said back/fourth elastic 48 is under 1-3 times higher elongation and contraction forces (higher elongation also has a greater contraction force) than front/second elastic 50 to keep seat of garment from creeping up during movement and cause less tightness in the groin area during use (column 6, lines 34-59). Rajala *does not expressly disclose* a multi-layered absorbent assembly or first and third elastics that create a waistband. **Kuwasaka** discloses diaper of pants-type configuration comprising fourth leg elastic 5c in the rear waist region 22 with a greater stretch stress than second leg elastic 5b in the front waist

region 20 (column 3, lines 21-46) to substantially avoid red marks caused by compression of leg elastics (column 1, lines 39-44), an absorbent core 4 disposed between liquid pervious top sheet 2 and liquid impervious back sheet 3 (column 2, line 25 and line 55-column 3, line 2) and first and third film-like waist elastic members 7 in the front and rear waist regions 20, 22 (column 4, lines 28-32). One would be motivated to modify the absorbent assembly of Rajala with the multi-layered absorbent assembly of Kuwasaka for improved absorbency and would be furthermore motivated to modify the article of Rajala with waist elastics for improved article fit around the user since both references are in the same problem-solving area; pants-like disposable garments having leg elastics with varying tensile characteristics for reducing red marking on the skin. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the article's absorbent assembly and waist region, thus providing a multi-layered absorbent assembly and waist elastics.

Regarding claim 2 Rajala discloses leg elastics 48, 50 are located on an inner surface of the garment and a waistband [an area adjacent outer cover layer 12] (figure 1). Rajala *does not expressly disclose* the waistband is located on the outer surface. **Kuwasaka** discloses waistband containing waist elastics 7 located on the outer surface (figure 1). One would be motivated to modify the waistband of Rajala with the outer surface location of Kuwasaka for improved article fit around the waist since both references are in the same problem-solving area; pants-like disposable garments having leg elastics with varying tensile characteristics for reducing red marking on the skin. Therefore, it would be obvious to one of ordinary skill in the art at the time the

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invention was made to modify the waistband, thus providing a waistband located on the outer surface.

Regarding claim 8 Kuwasaka discloses first and third elastics 7 each extending between side edges of front panel 20 and back panel 22 (figure 2).

Regarding claims 9 and 12 Rajala/Kuwasaka disclose the absorbent assembly as discussed above with respect to claim 1. Rajala further discloses absorbent pad is laid between the edges 52 of crotch portion 24 and thus the absorbent pad is capable of overlapping the second and fourth elastics 50,48 (column 4, lines 55-59 and figure 2). If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

Regarding claim 13 Rajala/Kuwaska inherently disclose the second and fourth elastics are rendered non-elastic by the absorbent assembly pad since the added material would render the material non-elastic since the materials used in the multi-layered absorbent assembly are non-elastic. The discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not expressly disclose not render the old composition patentably new to the discoverer. *Atlas Powder Co. v. Ireco Inc.*, 190F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not expressly disclose not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

Regarding claims 18-20 Rajala discloses second and fourth leg elastic width of 0.5 inch (column 6, lines 13-15). Rajala/Kuwasaka disclose waist band containing waist elastics 7 that are capable of having a width less than, greater than or equal to the width of the leg bands since the areas containing elastics are designed to improve fit and comfort to accommodate a variety of user sizes (Rajala column 5, lines 47-60 and Kuwasaka column 1, lines 34-44). If a prior art structure is capable of performing the intended use as recited in the preamble, then it meets the claim. See, e.g., *In re Schreiber*, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997).

Regarding claim 21 Rajala discloses leg elastics capable of being elongated/stretched 100-300% (column 6, lines 47-54). Rajala/Kuwasaka do not expressly disclose waistband-stretching percentage. However, when the reference discloses all the limitations of a claim except a property or function (waistband-stretching percentage), and the examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof to applicant as in *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP § § 2112- 2112.02.

4. Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rajala et al. (US 5,940,887; herein 'Rajala') in view of Kuwasaka (EP 1,072,243 A2; herein 'Kuwasaka'), and further in view of Kawaguchi et al. (US 5,735,839; herein 'Kawaguchi'). Rajala discloses the leg elastics contain 3-6 elastic threads (column 6, lines 17-25). Rajala/Kuwasaka *do not expressly disclose* the number of elastic strands in the waist elastics 7 in relation to the number of leg elastic threads. **Kawaguchi**



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discloses a shorts-type diaper 1 with waist elastics 11 having a stress at 30% elongation of 50-150 g (column 4, lines 44-46), second and fourth leg elastics 21 at leg opening 20 located in front and back panels having a stress at 30% elongation of 40-100 g (column 4, lines 62-64 and figure 2), second and fourth leg elastics 21 at crotch portion 50 having a stress at 30-50% elongation of 40-100 g (column 4, line 65-column 5, line 6) to prevent diaper sliding during use (column 1, lines 52-56), and first and third waist elastics 31a closest to waist opening portion 10 (column 5, lines 14-19). Kawaguchi further discloses four to five elastic members 11 provided at the waist opening portion 10 of each of the front and rear waist body portions 6, 7 (column 4, lines 7-14 and lines 27-29) and three to six second and fourth/leg elastics (column 5, lines 46-47) to prevent article deformation and poor appearance (column 5, lines 50-54). One would be motivated to modify the leg and waist elastics of Rajala/Kuwasaka with the greater or same number of waist elastics than leg elastics of Kawaguchi for improved article appearance since the references disclose disposable absorbent articles having elastics with varying amounts of stress. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the leg and waist elastics, thus providing the same number or different number of waist elastics as leg elastics.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yamamoto et al. (US 6,364,863) is cited for showing a disposable absorbent undergarment 1A having a back panel with tensile stress greater

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than front panel tensile stress due to first and second elastics to prevent slip down of article during use.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

